

**STATE OF MINNESOTA**  
**COUNTY OF HENNEPIN**

**DISTRICT COURT**  
**FOURTH JUDICIAL DISTRICT**

Kacey White (individually),  
 Charles Stotts (individually), and  
 d/b/a Town Talk Diner & Gastropub,

Plaintiff(s),

vs.

City of Minneapolis,  
 Mayor Jacob Frey,

Defendant(s).

**PLAINTIFFS' SUMMONS**

Civil No: \_\_\_\_\_

THIS SUMMONS IS DIRECTED TO THE ABOVE-NAMED DEFENDANTS BY AND THROUGH THEIR ATTORNEY OF RECORD: GREGORY SAUTTER, OFFICE OF THE CITY ATTORNEY, 350 S. FIFTH STREET, ROOM 210, MINNEAPOLIS, MN 55415.

**1. YOU ARE BEING SUED.** The Plaintiffs have started a lawsuit against you. The Plaintiffs' Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

**2. YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons **a written response** called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

Michael Healey  
 Wagner, Falconer, & Judd, Ltd.  
 100 South Fifth Street  
 Suite 800  
 Minneapolis, MN 55402

**3. YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiffs' Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiffs should not be given everything asked for in the Complaint, you must say so in your Answer.

**4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not answer within 21 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiffs

everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

**5. LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

**6. ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving the dispute.

Dated: 01/07/21

**WAGNER, FALCONER, & JUDD, LTD.**

*s/ Michael B. Healey* \_\_\_\_\_

Michael B. Healey, #0389283

Nathan B. Serr, #0339386

Cassandra M. Kuebler, #0402161

100 South Fifth Street, Suite 800

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**ATTORNEYS FOR PLAINTIFFS**

**STATE OF MINNESOTA**  
**COUNTY OF HENNEPIN**

**DISTRICT COURT**  
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Kacey White (individually),  
 Charles Stotts (individually), and  
 d/b/a Town Talk Diner & Gastropub,  
 Plaintiff(s),

vs.

City of Minneapolis,  
 Mayor Jacob Frey,  
 Defendant(s).

**PLAINTIFFS' COMPLAINT AND  
 DEMAND FOR JURY TRIAL**

Civil No: \_\_\_\_\_

TO: THE ABOVE-NAMED DEFENDANTS BY AND THROUGH THEIR ATTORNEY OF  
 RECORD: GREGORY SAUTTER, OFFICE OF THE CITY ATTORNEY, 350 SOUTH 5TH  
 STREET, ROOM 210, MINNEAPOLIS, MN 55415

Plaintiffs hereby allege as follows:

**PARTIES**

1. Kacey White ("Kacey") and Charles Stotts ("Charles") (collectively "Plaintiffs")  
 are residents of Minneapolis, Minnesota.

2. Kacey and Charles are the owners of Town Talk Diner & Gastropub ("Town  
 Talk") located at 2707 East Lake Street in Minneapolis, Minnesota.

3. Defendant the City of Minneapolis ("the City") is a municipality incorporated in  
 the State of Minnesota.

4. Defendant Jacob Frey ("Mayor Frey") is the Mayor and chief executive of the  
 City, and resides in Minneapolis, Minnesota.

### **JURISDICTION AND VENUE**

5. Jurisdiction is proper in Hennepin County, Minnesota because Kacey and Charles reside in Hennepin County and the events giving rise to these claims arose in Hennepin County, Minnesota, the Fourth Judicial District of Minnesota.

6. This Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1331 because this action presents federal questions and seeks to redress deprivations of rights under the United States Constitution pursuant to 42 U.S.C. § 1983.

7. Venue is proper in this District under 28 U.S.C. § 1391(e)(1) because the events giving rise to these claims arose in Hennepin County, the Fourth Judicial District of Minnesota.

### **FACTUAL ALLEGATIONS**

#### **A. Background**

8. On May 25, 2020, George Floyd died while in the custody of the Minneapolis Police Department's Third Precinct officers, igniting moral outrage. A racial justice movement deployed through the City of Minneapolis. Protests began to take place.

9. On May 26, 2020, hundreds of people surrounded the Minneapolis Police Department's ("MPD") Third Precinct Station on the corner of Minnehaha Ave and East Lake Street. Violence and destruction occurred in the surrounding area, creating a trail of property damage.

10. On May 27, 2020 "the situation near Lake Street and Hiawatha in Minneapolis [had] evolved into an extremely dangerous situation."<sup>1</sup> Fully aware of the serious safety issues

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<sup>1</sup> <https://twitter.com/GovTimWalz/status/1265849420035301384>

they created, Mayor Frey and the City stood back and watched as their failure to follow the policies in place destroyed the businesses on Lake Street.<sup>2</sup>

11. Residents and business owners near the MPD's Third Precinct noticed vehicles dropping off pallets of bricks and other objects typically used to cause property destruction. Police were notified and questioned regarding the activity. The residents and business owners were told to "get the f#\$@ out of the area" by the police.

12. On May 28, 2020, the City, at the direction of Mayor Frey, abruptly abandoned the MPD's Third Precinct Station and the neighborhood streets relying on its protection. Rather than seeking to restore order and protect the residents and property owners within the Third Precinct, the City and Mayor Frey instead chose to surrender the area to rioters who set fire to the community.

13. Kacey, Charles, and others, repeatedly pleaded with Mayor Frey and other local leaders to put an end to the destruction of their property and the imminent dangers that were posed to them as their neighborhood went up in flames. But the City and Mayor Frey failed to protect Kacey and Charles' business, forcing Kacey and Charles to resort to litigation to address Mayor Frey and the City's unacceptable response.

14. Kacey and Charles are residents and small business owners in the Minneapolis neighborhood that was harmed by the May 2020 riots. They have worked full time for over four years designing, stocking, renovating, and improving Town Talk to make it one of South Minneapolis' finest and most popular restaurants.

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<sup>2</sup> <https://twitter.com/MayorFrey/status/1265876660093685761>

15. Located in a historic building, the local neighborhood diner Town Talk has become an iconic restaurant on Lake Street. Mayor Frey and the City's failure to quell several nights of rioting, fires, and ransacking of local businesses resulted in Town Talk being engulfed in flames and burnt to the ground.

16. The MPD, National Guard, and Minneapolis Local Leaders have policies in place to address crowd control.

17. During the days of May 25, 2020 to May 28, 2020, the City and Mayor Frey continuously deviated from these policies.

18. Due to Mayor Frey and the City's failure to follow proper policy, Kacey and Charles suffered irreparable harm by being subject to acts of violence, harassment, trespass, and vandalism, inability to use their property, loss of police protection and public services, including police, medical, and fire services; loss of business revenue; reduction in property value; destruction of property; and other economic and non-economic injuries.

19. On May 29, 2020, the National Guard was mobilized in the City. Following the policies the National Guard has in place, they restored peace and order to the City.

20. On or about September 22, 2020, Kacey and Charles submitted a request for information from Mayor Frey and the City pursuant to the Freedom of Information Act. To date, Mayor Frey and the City have failed to respond to this request.

**B. The Start of the Protests**

21. Since the death of George Floyd on May 25, 2020, racial justice protests began to fill the City.

22. Participants of the justice movements occupied the streets and sidewalks of the City, especially in the neighborhood surrounding the Third Precinct.



23. Peaceful protests soon developed into riots, creating a public safety concern.<sup>3</sup>



<sup>3</sup> Scott Newman & Warren Limmer, Joint Transportation & Judiciary & Public Safety Committee, Review of Lawlessness & Government Responses to Minnesota's 2020 Riots (St. S. Rep. Oct. 2020).



24. As history has demonstrated, the killing of an unarmed black man in police custody sparks an emphatic societal response.

- A. Trayvon Martin, killed by neighborhood watch in Florida in 2012.
- B. Michael Brown, killed by a police officer in Missouri in 2014.
- C. Philando Castile, killed by a police officer in Minnesota in 2016.
- C. EJ Bradford, killed by a police officer in Alabama in 2018.
- D. Willie McCoy, killed by a police officer in California in 2019.

25. On May 25, 2020 when indignation began, Minneapolis' local officials were required to follow proper protocol, including the need to be on heightened alert.

26. However, executive leadership at the local level failed to distinguish between demonstrators and rioters. Mayor Frey ultimately failed to provide the guidance Minnesotans expect from their offices.<sup>4</sup>

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<sup>4</sup> *Id.* at 1.



27. Mayor Frey initially tried to negotiate with and appease the rioters rather than give law enforcement the authority to confront criminal acts with enough force to restore law and order.<sup>5</sup>

28. A primary responsibility of local elected officials is to protect the public. The inaction on the part of Mayor Frey led to an increase in violence.<sup>6</sup>

29. Mayor Frey's failure to call for additional police presence on May 25 and 26, 2020 allowed for the "second-most destructive period of local unrest in United States history" to ensue.<sup>7</sup>

### **C. First Wave of Destruction**

30. Two days later, on May 27, 2020, the protests evolved into a manageable number of destructive crowds. Shortly after 10:30 p.m., that evening, the "situation near Lake Street and Hiawatha [had] evolved into an extremely dangerous situation."<sup>8</sup>

31. That evening, the first plea for everyone to leave the third precinct for the safety of the public, and to allow firefighters and paramedics to attend to the violence and destruction was made by Governor Tim Walz ("Governor Walz").<sup>9</sup>

32. The second plea came from Mayor Frey around 12:30 a.m., in the early morning of May 28, 2020.<sup>10</sup>

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<sup>5</sup> *Id.*

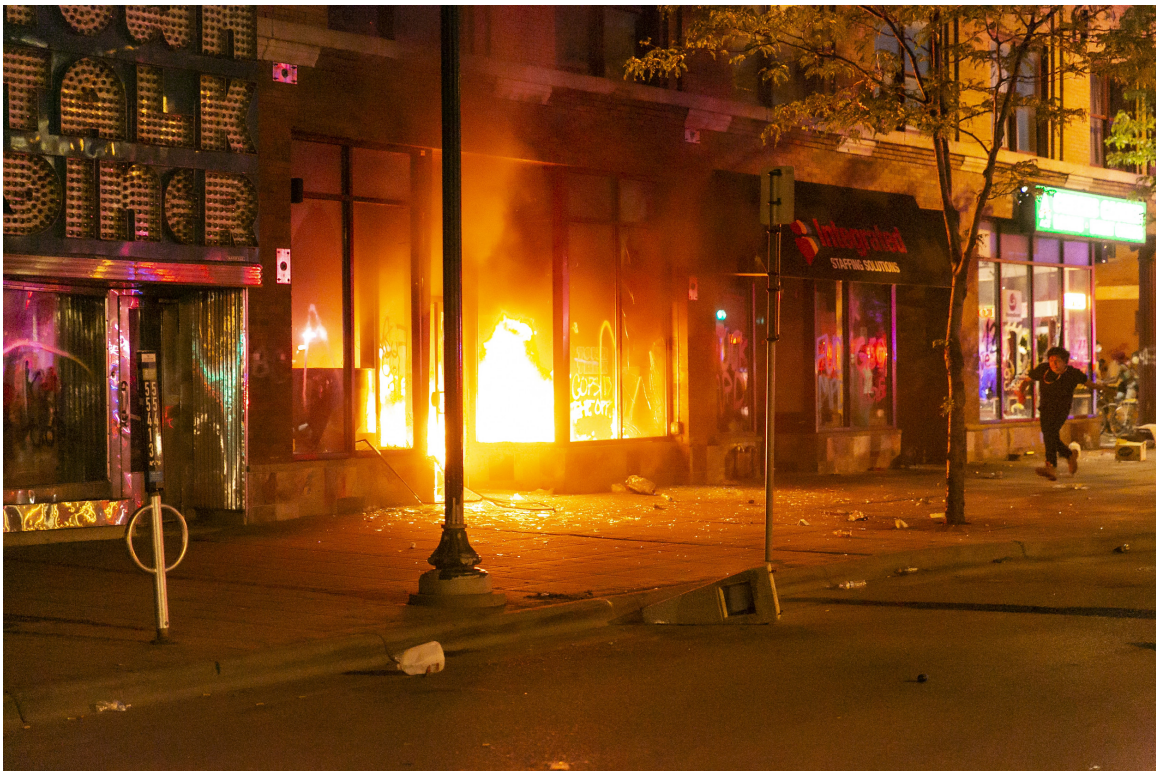
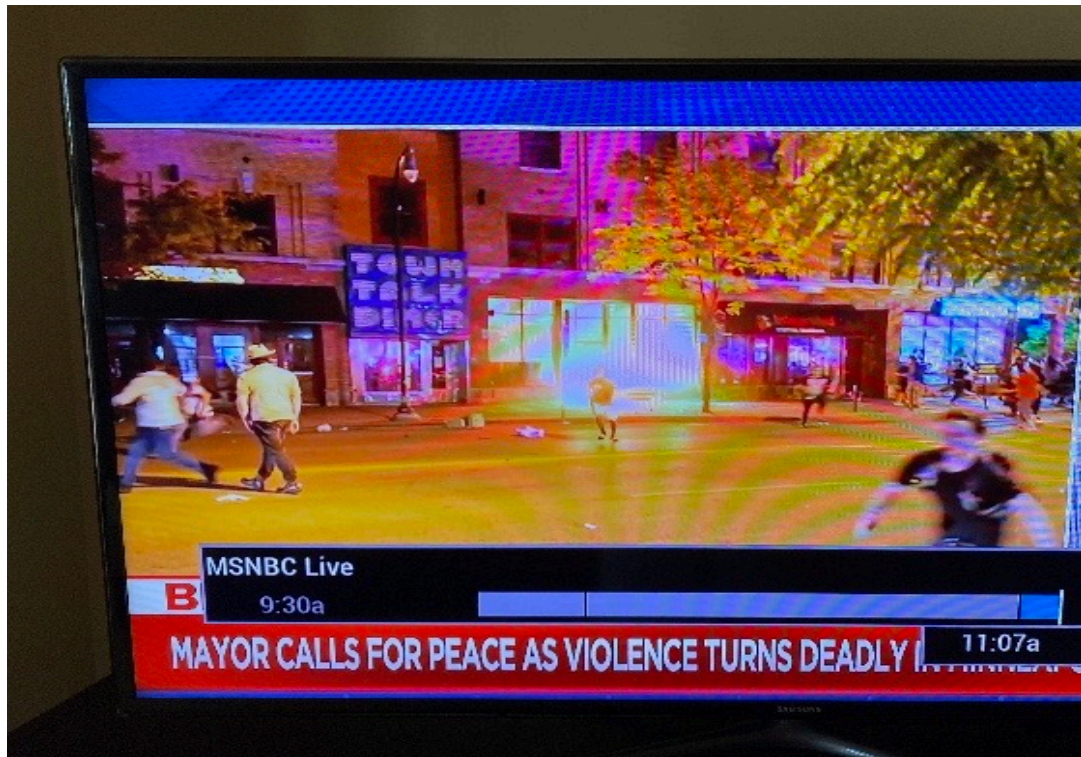
<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 6.

<sup>8</sup> <https://twitter.com/GovTimWalz/status/1265849420035301384>

<sup>9</sup> *Id.*

<sup>10</sup> <https://twitter.com/MayorFrey/status/1265876660093685761>





33. Ignoring the pleas of the Minnesota local leaders, a significant (yet manageable) number of malefactors took over East Lake Street. For over three hours that morning, East Lake Street burned.<sup>11</sup>

34. The small businesses and homes that weren't engulfed in flames on that evening were vandalized and destroyed.

35. The morning of May 28, 2020, Kacey and Charles arrived at Town Talk to assess the damage after a night of violence and looting, finding the destruction to their restaurant to be far worse than they could have imagined.



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<sup>11</sup> <https://twitter.com/ryahoward/status/1265904413933293568>;  
<https://twitter.com/ChristianeWCCO/status/1265952993196888064>







**D. Anticipating the Second Wave – Afternoon of May 28, 2020**

36. Kacey and Charles looked at what was left of their historic restaurant, which had not yet been burned but had been devastated by the amount of destruction. They then boarded up the windows of Town Talk, hoping to prevent further damage from the riots that every reasonable person knew would be coming that evening.





37. The media, including WCCO, KARE 11, KSTP, and Fox 9 openly began asking where the elected leaders were, "what's the plan?", "who is in charge?", and "what are your resources?" However, Mayor Frey's responsive news conference was "the strangest, most rattled, evasive, and unclear news conference," providing no answers to the citizens of the City.<sup>12</sup>

38. Proactively responding to another anticipated evening of destruction, at 5:00 p.m. on May 28, 2020, Saint Paul requested that the National Guard be activated for the protection of their city. No request came at that time from the City of Minneapolis.

39. At 8:30 p.m. that evening, Governor Walz observed that the activity surrounding Lake Street was no longer appearing to be peaceful.<sup>13</sup>

**E. The Third Precinct is Abandoned – Evening of May 28, 2020**

40. A policy was in place to hold the Third Precinct without a loss of life using the same non-lethal methods used previously in the week.<sup>14</sup>

41. The City has a policy in place in the event of civil unrest. Mayor Frey consciously chose to deviate from this policy.

42. Mayor Frey failed to acknowledge the seriousness of the situation and failed to confront the lawlessness.

43. Cheryl Dorsey, a retired police sergeant commented "I do not know what kind of intelligence they may have over there on that police department. I don't know how they could've been caught off guard by this. But surely, someone should have realized that this situation was very different from other incidents."<sup>15</sup>

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<sup>12</sup> Scott Newman & Warren Limmer, Joint Transportation & Judiciary & Public Safety Committee, Review of Lawlessness & Government Responses to Minnesota's 2020 Riots, 16, 18 (St. S. Rep. Oct. 2020) (citing 5/29/20 Tom Lunden Tweet).

<sup>13</sup> <https://www.youtube.com/watch?v=gyQFzWo4j1k>

<sup>14</sup> *Id.* at 27.

<sup>15</sup> <http://www.cnn.com/TRANSCRIPTS/2020.05.29.html>

44. As the chaos became more intense due the lack of police, the MPD were forced to watch the escalation as they waited on a decision to be made by Mayor Frey regarding the Third Precinct.

45. Minneapolis City Council Member Linea Palmisano stated "You can't let the Third Precinct go, that would just be the epitome of ultimate chaos in our city," properly pointing out that the decision should be made consistent with the City's policy.<sup>16</sup>

46. Mayor Frey was informed by the MPD that they could hold the precinct solely using non-lethal methods, but Mayor Frey refused to use those non-lethal methods to protect the Third Precinct.<sup>17</sup>

47. Minneapolis police officers were told they were not allowed to use the tools at their disposal because it "looks bad," and therefore were not allowed to respond to the rioting in the way they were trained to respond.<sup>18</sup>

48. As Mayor Frey indecisively balanced politics with tactics, ignoring the advice of Minneapolis' top law enforcement officials, destruction to the Third Precinct quickly escalated.<sup>19</sup>

49. Some Minneapolis police officers were informed by the Longfellow Business Association that "the police would be abandoning the precinct and would be leaving [the citizens of Minneapolis] to defend for ourselves in the middle of a riot."<sup>20</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> Scott Newman & Warren Limmer, Joint Transportation & Judiciary & Public Safety Committee, Review of Lawlessness & Government Responses to Minnesota's 2020 Riots, 24 (St. S. Rep. Oct. 2020) (citing Commander Gerlicher's Written Testimony).

<sup>18</sup> *Id.* at 25 (citing Hearing 4, 1:27:20-1:27:50).

<sup>19</sup> *Id.* at 27.

<sup>20</sup> *Id.* at 11 (citing Hearing 4, 2:07:23-2:07:44).

50. Due to the failure of Mayor Frey and the City to provide the resources and personnel needed, the MPD was forced into a defensive position during the rioting with no ability to safely respond to and stop the looting and arson.<sup>21</sup>

51. Commander Scott Gerlicher of the MPD described the destruction and the inability of local police to control the rioting: "The situation was dire, and we needed assistance immediately."<sup>22</sup>

52. An untimely directive to abandon the Third Precinct finally came from Mayor Frey through the Chief of Police.<sup>23</sup> Mayor Frey made the decision to evacuate the Third Precinct, removing police officers from the neighborhood, and leaving the citizens of Lake Street to defend themselves and their property.<sup>24</sup>

53. Minneapolis police officers never had a situation where the Mayor, Governor, and the Commissioner of Public Safety were making these types of decisions rather than the local police.<sup>25</sup> Despite it being the MPD's responsibility to make such decisions, Mayor Frey actively chose to deviate from the chain of command policy in place.

54. The citizens and business owners were not consulted, given an opportunity to comment, or provided a hearing, regarding the directive to abandon the Third Precinct and to leave citizens and business owners to fend for themselves.

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<sup>21</sup> *Id.* at 18 (citing Commander Gerlicher's Written Testimony).

<sup>22</sup> *Id.* at 8 (citing Commander Gerlicher's Written Testimony).

<sup>23</sup> *Id.* at 24 (citing Commander Gerlicher's Written Testimony).

<sup>24</sup> <https://www.mprnews.org/story/2020/05/28/minneapolis-wakes-up-to-destruction-after-night-of-protests>

<sup>25</sup> Scott Newman & Warren Limmer, Joint Transportation & Judiciary & Public Safety Committee, Review of Lawlessness & Government Responses to Minnesota's 2020 Riots, 24 (St. S. Rep. Oct. 2020) (citing Hearing 4, 1:48:17-1:48:50).

55. As the Third Precinct fell it became apparent to the Commissioner of the Minnesota Department of Public Safety and other State Officials that local leader, Mayor Frey, could not handle it himself.<sup>26</sup>

56. By 10:30 p.m., the Third Precinct had been taken over by rioters.<sup>27</sup>



<sup>26</sup> *Id.* (citing Hearing 3, Part 2, 20:11-21:21).

<sup>27</sup> <https://www.youtube.com/watch?v=gvQFzWo4jlk>



#### F. Citizens Abandoned – Evening of May 29, 2020

57. As a result of Mayor Frey's decision to abandon the Third Precinct, one by one, 16 to 26 buildings in Sector Four of the Third Precinct caught fire as well.<sup>28</sup>

58. Citizens were then forced to try and protect themselves and their property as it became clear that the City and Mayor Frey were not keeping them safe.<sup>29</sup>

59. With no firefighters in sight, Minneapolis residents, including two members of the House of Representatives, Aisha Gomez and Hodan Hassan, struggled to put out the fires:

"@RepHassan and I spent 90 minutes trying to get a gas station fire put out. A basic City service.

When I have time and our community isn't burning I will explain the dizzying game of

jurisdictional hot potato we experienced. This response is unacceptable." (emphasis added).<sup>30</sup>

<sup>28</sup> <https://www.kimt.com/content/news/30-fire-events-including-16-involving-structures-on-one-Minneapolis-street-570832391.html>; <https://bringmethenews.com/minnesota-news/a-list-of-the-buildings-damaged-looted-in-minneapolis-and-st-paul>

<sup>29</sup> *Id.* at 18.

<sup>30</sup> <https://twitter.com/RepAishaGomez/status/1266616114257235974>



60. When business owners asked how to get police protection, the response was that they did not know, and that citizens should try to get ahold of Mayor Frey's office or police chief. There was never an answer from either of those offices.<sup>31</sup>

61. Others who called 911 were told that if the situation was not "life threatening" then the police would not get there for four days.<sup>32</sup>

62. Some 911 calls were going completely unanswered. "The most serious types of 911 calls, which are usually responded to immediately, were unanswered for extended periods of time because of the rioting."<sup>33</sup>

63. The delays in response from Mayor Frey and the City, particularly for the most serious 911 calls, allowed for more rioting, destruction, looting, and violence.<sup>34</sup>

64. While the riots were ongoing, Mayor Frey and the Minneapolis City Council did not call for more police officers on the street.

65. Although stationed nearby, firefighters did not enter the protest zone.<sup>35</sup>

66. At one point during the riots, Minneapolis firefighters quit responding to arsons and only responded to medical emergencies because even they did not feel safe without police

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<sup>31</sup> *Id.* at 17 (citing Hearing 1, 1:03:14-1:04:43).

<sup>32</sup> *Id.* at 17 (citing Hearing 1, 1:46:42-1:47:46).

<sup>33</sup> *Id.* at 17, 18 (citing Hearing 4, 3:23:41-3:24:24; Commander Gerlicher's Written Testimony).

<sup>34</sup> *Id.* at 18.

<sup>35</sup> [https://twitter.com/maxnesterak/status/1266213485026906113?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1266213485026906113%7Ctwgr%5Eshare\\_3&ref\\_url=https%3A%2F%2Fwww.mprnews.org%2Fstory%2F2020%2F05%2F28%2Fminneapolis-wakes-up-to-destruction-after-night-of-protests](https://twitter.com/maxnesterak/status/1266213485026906113?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1266213485026906113%7Ctwgr%5Eshare_3&ref_url=https%3A%2F%2Fwww.mprnews.org%2Fstory%2F2020%2F05%2F28%2Fminneapolis-wakes-up-to-destruction-after-night-of-protests); <https://www.mprnews.org/story/2020/05/28/minneapolis-wakes-up-to-destruction-after-night-of-protests>

protection.<sup>36</sup>



67. As Lake Street businesses continued to burn, local protection was nowhere to be found.<sup>37</sup> As publicly expressed by Minneapolis citizens:

A. "They didn't protect our people. We were all on our own. The fire engine was just sitting there, but they wouldn't do anything."<sup>38</sup>

B. "Where is the Police??? Where are the firefighters??? Where is the National Guard!??? . . . Not much else left on E. Lake St. to set on fire other than homes! . . . What is next? Who will protect us? What is the plan?"<sup>39</sup>

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<sup>36</sup> Scott Newman & Warren Limmer, Joint Transportation & Judiciary & Public Safety Committee, Review of Lawlessness & Government Responses to Minnesota's 2020 Riots, 9 (St. S. Rep. Oct. 2020) (citing Hearing 4, 1:49:02-1:50:30).

<sup>37</sup> *Id.* at 18.

<sup>38</sup> *Id.* at 9 (citing <https://www.startribune.com/manufacture-that-burned-during-mpls-riots-plans-to-move-out-of-the-city/571104922/>).

<sup>39</sup> *Id.* at 17 (citing City of Minneapolis Data Practice Information 2, pgs. 119-120).

68. At 11:08 p.m. on May 29, 2020, in response to concerned citizens, the National Guard tweeted that they were in Minneapolis and ready to assist the Minneapolis Fire Department. However, the National Guard was still not activated.<sup>40</sup>

69. At 11:30 p.m., Mayor Frey told the citizens of Minneapolis "for our Minneapolis firefighters to respond, the area of the fire must be secure so they can focus on fighting the fire without risking their own safety."<sup>41</sup> However, Mayor Frey did not bring in the National Guard or MPD into the area to secure it.

70. After over an hour of Lake Street burning, there were still no police officers or National Guard in sight.<sup>42</sup>

71. Sara Sidner, a CNN National Correspondent commented "I have never seen a situation like this. I've never seen a situation where a precinct, a police department precinct, is on fire, and there is absolutely no authority out there to try and control the situation."<sup>43</sup>

#### **G. Minnesota National Guard is Mobilized**

72. After **five (5) hours** of roaring flames destroying Lake Street, at 3:30 a.m. Town Talk was set ablaze. Not a single public official, police officer, firefighter or member of the Minnesota National Guard was around.<sup>44</sup>

73. State Senator Patricia Torres Ray ("Ray") called Governor Walz directly, pleading for help as she reiterated that "her district was on fire and there weren't any police there and there

<sup>40</sup> <https://twitter.com/MNNationalGuard/status/1266219821840109569>

<sup>41</sup> <https://twitter.com/MayorFrey/status/1266585209337786369>

<sup>42</sup>

[https://twitter.com/maxnesterak/status/1266213485026906113?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1266213485026906113%7Ctwgr%5Eshare\\_3&ref\\_url=https%3A%2F%2Fwww.mprnews.org%2Fstory%2F2020%2F05%2F28%2Fminneapolis-wakes-up-to-destruction-after-night-of-protests](https://twitter.com/maxnesterak/status/1266213485026906113?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1266213485026906113%7Ctwgr%5Eshare_3&ref_url=https%3A%2F%2Fwww.mprnews.org%2Fstory%2F2020%2F05%2F28%2Fminneapolis-wakes-up-to-destruction-after-night-of-protests)

<sup>43</sup> <http://www.cnn.com/TRANSCRIPTS/2020.05.29.html>

<sup>44</sup> <https://twitter.com/CathyWurzer/status/1266312114739843074>; <https://www.twincities.com/2020/07/04/they-have-lost-control-how-minneapolis-leaders-failed-to-stop-their-city-from-burning/>

weren't any firefighters. There was no social control."<sup>45</sup> Regular citizens' calls for help remained unanswered.

74. Major General Jon Jensen, Adjutant General of the Minnesota National Guard, finally had to tell Governor Walz that the Minnesota National Guard was going to protect the firefighters until the city had the situation under control again.<sup>46</sup>



75. It was not until 3:45 a.m. that the plan to use the National Guard was ordered in.<sup>47</sup>

76. The Minnesota National Guard was not fully mobilized in the City of Minneapolis until four days after the first building was burned.<sup>48</sup>

<sup>45</sup> <https://www.youtube.com/watch?v=gyQFzWo4j1k>

<sup>46</sup> Scott Newman & Warren Limmer, Joint Transportation & Judiciary & Public Safety Committee, Review of Lawlessness & Government Responses to Minnesota's 2020 Riots, 9 (St. S. Rep. Oct. 2020) (citing Hearing 3, 2:12:15-2:14:46).

<sup>47</sup> <https://www.youtube.com/watch?v=gyQFzWo4j1k>

<sup>48</sup> Scott Newman & Warren Limmer, Joint Transportation & Judiciary & Public Safety Committee, Review of Lawlessness & Government Responses to Minnesota's 2020 Riots, 2 (St. S. Rep. Oct. 2020) (citing Commander Gerlicher's Written Testimony; <https://www.cbsnews.com/news/tim-walz-minnesota-governor-fully-mobilizes-national-guard-first-time-in-history-george-floyd-death-protests/>).



77. However, they were too late. At 4:27 a.m., Ray tweeted "My district is in flames. Many buildings collapsing right now. Fires going on for hours and no firefighters arrived to the area. Stores, restaurants, post office, barbershops, salons, gone! (crying emoticon) #Minneapolis."<sup>49</sup>

78. Mayor Frey and the City's failure to control the significant (yet manageable) number of malefactors on Lake Street resulted in his failure to protect Town Talk. At 4:45 a.m., the historic restaurant continued to burn.

#### **H. The Aftermath – Morning of May 29, 2020**

79. At 8:19 a.m. that morning, all that remained of Town Talk was its iconic sign demolished under a pile of rubble.<sup>50</sup>



<sup>49</sup> <https://twitter.com/TorresRayMN/status/1266300203016916993>

<sup>50</sup> <https://twitter.com/ShadowFoxMT/status/1272287041569591298>;  
<https://twitter.com/motarola123/status/1266358392148369415>









80. The destruction to Lake Street's local businesses by fires set during the rioting was so severe that members of the Federal Bureau of Alcohol, Tobacco and Firearms National Response Team were sent to Minneapolis to investigate.<sup>51</sup>

81. "Politics, personal agendas, and personal feelings prevented police officers from protecting the citizens of Minneapolis and the destruction of property."<sup>52</sup>

82. The City's response was an "abject failure" as proclaimed by Governor Walz.<sup>53</sup>

<sup>51</sup> Scott Newman & Warren Limmer, Joint Transportation & Judiciary & Public Safety Committee, Review of Lawlessness & Government Responses to Minnesota's 2020 Riots, 9 (St. S. Rep. Oct. 2020) (citing <https://www.kare11.com/article/news/local/george-floyd/atf-national-response-team-requested-to-help-investigate-business-fires-in-minneapolis-st-paul/89-694e445e-e812-4761-94cf-ef00f90d0b65#:~:text=Members%20of%20the%20Bureau%20of,spokesperson%20with%20the%20ATF%20St.>)

<sup>52</sup> *Id.* at 25 (citing Hearing 4, 2:14:13-2:14:43).

<sup>53</sup> <https://www.startribune.com/gov-tim-walz-laments-abject-failure-of-riot-response/570864092/>

83. Mayor Frey and the City failed to react to the seriousness of the riots and danger to Minnesotans and they failed to comply with policies to confront and stop the rioters. As a result of Mayor Frey and the City's failed leadership, Kacey and Charles suffered damages in excess of \$4,500,000.00.

**COUNT ONE**

**PROCEDURAL DUE PROCESS – 42 U.S.C. § 1983**

84. Kacey and Charles restate all other allegations in this complaint and incorporate them by reference herein.

85. Kacey and Charles have constitutionally protected property rights, as defined by Federal and Minnesota state law, to exclude others from their property and to the use and quiet enjoyment of their property.

86. Mayor Frey and the City have infringed on those rights by: 1) negotiating with and appeasing rioters; 2) assisting and allowing an indefinite, unpermitted obstruction of the public streets, and sidewalks of the City, thereby denying Kacey and Charles access to their property; and 3) assisting and allowing the pervasive vandalism and trespasses against Kacey and Charles' property, thereby denying Kacey and Charles the ability to use their property and exclude others from it.

87. Mayor Frey and the City have infringed on Kacey and Charles' constitutionally protected rights without providing Kacey or Charles with any due process before depriving them of these rights, or providing any recourse following the deprivation of rights. In particular, Mayor Frey and the City failed to provided Kacey or Charles with notice or opportunity to be heard before or after denying them of their rights to access their property, use their property, and exclude others from their property.

88. Mayor Frey and the City have done so pursuant to City policy as created, ratified, and authorized by City policymakers, including Mayor Frey, without any notice to Kacey or Charles or opportunity for them to be heard.

89. As a direct result of Mayor Frey and the City's actions, Kacey and Charles have been denied regular and customary use of, access to, and enjoyment of their property, including the ability to walk to their business without obstruction, the ability to prevent and remedy vandalism, and the ability to prevent trespasses and theft against their property.

90. Kacey and Charles have been harmed by this deprivation, including through loss of revenue, loss of property value, damages to property, and other damages.

91. As a result of Mayor Frey and the City's acts or omissions, Kacey and Charles suffered losses including their building, lost restaurant revenues, loss of business, and future income.

## **COUNT TWO**

### **SUBSTANTIVE DUE PROCESS – 42 U.S.C. § 1983**

92. Kacey and Charles restate all other allegations in this complaint and incorporate them by reference herein.

93. Kacey and Charles have a right pursuant to substantive due process to be protected from state-created dangers. "Minnesotans have a right to government protection from these [aforementioned] criminal acts."<sup>54</sup>

94. Mayor Frey and the City's actions, assistance, and allowance of rioters and looters greatly increased the likelihood of property damage, loss of business revenue, personal injury, loss of use of property, and other damages to Kacey and Charles.

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<sup>54</sup> Scott Newman & Warren Limmer, Joint Transportation & Judiciary & Public Safety Committee, Review of Lawlessness & Government Responses to Minnesota's 2020 Riots, (St. S. Rep. Oct. 2020).

95. "[E]lected local leaders identified with the causes promoted by the demonstrators, causing them to lose sight of their responsibility to protect the public from criminal acts committed during the riots."<sup>55</sup>

96. All damages suffered, and still to be suffered, by Kacey and Charles were and are foreseeable.

97. Mayor Frey and the City acted with deliberate indifference to the known and obvious harm that would be suffered by Kacey and Charles.

98. Mayor Frey and the City have done so pursuant to City policy as created and ratified by City policymakers, including Mayor Frey.

99. "Elected officials like . . . Mayor Frey, and the Minneapolis City Council believe that increasing the presence of law enforcement and the Minnesota National Guard causes more rioting than ending it. Protesting is a First Amendment right; rioting is a criminal act. The First is protected while the second needs to be stopped."<sup>56</sup>

100. As a result of Mayor Frey and the City's acts or omissions, Kacey and Charles suffered losses including their building, lost restaurant revenues, loss of business, and future income.

### **COUNT THREE**

#### **NEGLECT TO PREVENT – 42 U.S.C. § 1986**

101. Kacey and Charles restate all other allegations in this complaint and incorporate them by reference herein.

102. Mayor Frey and the City were constitutionally required to use reasonable diligence to prevent or aid in preventing the commission of any wrongs conspired to be done.

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<sup>55</sup> *Id.* at 1.

<sup>56</sup> *Id.* at 27.



103. Mayor Frey and the City neglected or refused to prevent the aforementioned wrongful acts from being committed and thus, are liable to Kacey and Charles for all damages caused by such wrongful acts.

104. Public safety is a core function of government, and the government failed to protect its citizens during the 2020 riots in Minnesota.<sup>57</sup>

105. "Mayor Frey's decision-making, combined with the Minneapolis City Council's call to defund and dismantle the police, caused initially peaceful protests to explode into riots that swept across the United States."<sup>58</sup>

106. The failure of the largest city in Minnesota to fully fund its police force puts the entire state in danger.<sup>59</sup>

107. The "spread of violence, including the fall of the Third Precinct, could have been avoided or at least severely curtailed had Mayor Frey given local law enforcement the authority to use non-legal tools and resources at their disposal."<sup>60</sup>

108. "Our highly trained Minnesota National Guard and local police officers understood how to protect Minnesota from riots, but . . . Mayor Frey got in their way."<sup>61</sup>

109. Mayor Frey and the City knew that there would be more looting and riots the nights of May 27 – 29, 2020, but took no visible steps to prevent the destruction.

110. As a result of Mayor Frey and the City's acts or omissions, Kacey and Charles suffered losses including their building, lost restaurant revenues, loss of business, and future income.

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<sup>57</sup> *Id.* at 12.

<sup>58</sup> *Id.* at 43.

<sup>59</sup> *Id.* at 18.

<sup>60</sup> *Id.* at 43.

<sup>61</sup> *Id.* at 27.

**COUNT FOUR**

**TAKING – 42 U.S.C. § 1983**

111. Kacey and Charles restate all other allegations in this complaint and incorporate them by reference herein.

112. Kacey and Charles have constitutionally protected property rights to use and enjoy their property and to exclude others from their property under 42 U.S.C. § 1983 and Minn. Const., Art. 1, Section 13.

113. Mayor Frey and the City have deprived Kacey and Charles of those rights by affirmatively assisting and allowing an indefinite, unpermitted invasion and obstruction of the public rights-of-way that provide access to Kacey and Charles' private property, as well as by affirmatively assisting and allowing the physical invasion of Kacey and Charles' private property by rioters and looters.

114. Mayor Frey and the City have done so pursuant to City policy as created and ratified by City policymakers, including Mayor Frey.

115. Kacey and Charles have not received compensation of their property rights.

116. Mayor Frey and the City's actions constitute an unlawful taking for private use and/or an unlawful taking for public use without just compensation, which has caused Kacey and Charles economic harm, including through a loss of property value, loss of business revenue, and loss of investment-backed expectations.

117. As a result of Mayor Frey and the City's acts or omissions, Kacey and Charles suffered losses including their building, lost restaurant revenues, loss of business, and future income.

**COUNT FIVE**

**FREEDOM OF INFORMATION ACT – 5 U.S.C. § 552**

118. Kacey and Charles restate all other allegations in this complaint and incorporate them by reference herein.

119. Kacey and Charles have constitutionally protected right to access government data under 5 U.S.C. § 552 and Minn. Stat. § 13.03.

120. Under the Freedom of Information Act (FOIA), an agency must respond to requests within 20 business days. (5 U.S.C. § 552(a)(6)).

121. Under the Government Data Practices Act, responses to requests from a data subject must be immediate if possible, or within ten business days. Responses to requests for public data must be in a prompt manner and within a reasonable time. (Minn. Stat. § 13.03, subd. 2(a); Minn. Rules, part 1205.0300).

122. On or about September 22, 2020, Kacey and Charles, through counsel, submitted a request for information from Mayor Frey and the City pursuant to the FOIA. To date, Mayor Frey and the City have failed to respond to this request.

123. As a result of Mayor Frey and the City's acts or omissions, Kacey and Charles are entitled to damages to be determined at trial.

**JURY DEMAND**

Kacey and Charles demand a trial by jury.

**PRAYER FOR RELIEF**

- I. Judgment in favor of Kacey and Charles and against Mayor Frey and the City for actual damages in excess of \$4,500,000.00;
- II. Prejudgment interest at the maximum rate allowed by law;
- III. Kacey and Charles' costs of investigation, costs of suit, and reasonable attorney's fees; and
- IV. All such other and further monetary, injunctive, and declaratory relief as the Court may deem just and proper.

Dated: 01/07/21

**WAGNER, FALCONER, & JUDD, LTD.**

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